

Centers for Medicare & Medicaid Services, HHS

§ 478.46

(b) The reconsidered determination is later reopened and revised in accordance with § 478.48.

[50 FR 15372, Apr. 17, 1985; 50 FR 41887, Oct. 16, 1985, as amended at 62 FR 25855, May 12, 1997; 62 FR 49938, Sept. 24, 1997. Redesignated at 64 FR 66279, Nov. 24, 1999; 77 FR 68563, Nov. 15, 2012]

§ 478.40 Beneficiary's right to a hearing.

(a) *Amount in controversy.* If the amount in controversy is at least \$200, a beneficiary (but not a provider or practitioner) who is dissatisfied with a QIO reconsidered determination may obtain a hearing by an administrative law judge (ALJ) of the Office of Hearings and Appeals of the SSA.

(b) *Subject matter.* A beneficiary has a right to a hearing on the following issues:

- (1) Reasonableness of the services.
- (2) Medical necessity of the services.
- (3) Appropriateness of the setting in which the services were furnished.

(c) *Governing provisions.* The provisions of subpart G, Reconsiderations and Appeals under the Hospital Insurance Program, of part 405 of this chapter apply to hearings and appeals under this subpart unless they are inconsistent with specific provisions in this subpart. References in subpart G to initial and reconsidered determinations made by an intermediary, carrier, or CMS should be read to mean initial and reconsidered determinations made by a QIO.

[50 FR 15372, Apr. 17, 1985; 50 FR 41887, Oct. 16, 1985. Redesignated at 64 FR 66279, Nov. 24, 1999]

§ 478.42 Submitting a request for a hearing.

(a) *Where to submit the written request.* A beneficiary who wants to obtain a hearing under § 478.40 must submit a written request to one of the following:

- (1) The office of the QIO or QIO subcontractor that made the initial determination.
- (2) A SSA District Office.
- (3) An office of the Office of Hearings and Appeals of SSA.
- (4) An office of the Railroad Retirement Board, in the case of a beneficiary who is a railroad retiree.

(b) *Time limit for submitting a request for a hearing.* (1) The request for a hearing must be filed within 60 days of receipt of the notice of the QIO reconsidered determination, unless the time is extended for good cause as provided in § 478.22.

(2) The date of receipt of the notice of the reconsidered determination is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(3) A request is considered filed on the date it is postmarked.

[50 FR 15330, Apr. 17, 1985, as amended at 77 FR 68563, Nov. 15, 2012]

§ 478.44 Determining the amount in controversy for a hearing.

(a) After an individual appellant has submitted a request for a hearing, the ALJ determines the amount in controversy in accordance with § 405.740(a) of this chapter for Part A services or § 405.817(a) of this chapter for Part B services. When two or more appellants submit a request for hearing, the ALJ determines the amount in controversy in accordance with § 405.740(b) of this chapter for Part A services and § 405.817(b) of this chapter for Part B services.

(b) If the ALJ determines that the amount in controversy is less than \$200, the ALJ, without holding a hearing, notifies the parties to the hearing that the parties have 15 calendar days to submit additional evidence to prove that the amount in controversy is at least \$200.

(c) At the end of the 15-day period, if the ALJ determines that the amount in controversy is less than \$200, the ALJ, without holding a hearing, dismisses the request for a hearing without ruling on the substantive issues involved in the appeal and notifies the parties to the hearing and the QIO that the QIO reconsidered determination is conclusive for Medicare payment purposes.

[50 FR 15372, Apr. 17, 1985, as amended at 59 FR 12184, Mar. 16, 1994. Redesignated at 64 FR 66279, Nov. 24, 1999]

§ 478.46 Departmental Appeals Board and judicial review.

(a) The circumstances under which the DAB will review an ALJ hearing